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No. 80-2106

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

GENERAL ATOMIC COMPANY,
Petitioner,

v.

UNITED NUCLEAR CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeal of the State of California for the Fourth Appellate District, Division One

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SUPPLEMENTAL MEMORANDUM FOR RESPONDENT IN OPPOSITION

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United Nuclear Corp. v. *General Atomic Co.*, —— N.M. ——, 629 P.2d 231 (1980), *appeal dismissed and cert. denied*, No. 80-1360, 49 U.S.L.W. 3787 (April 20, 1981), *rehearing denied*, 49 U.S.L.W. 3912 (June 12, 1981) 3

STATUTES:

Section 9 of the Federal Arbitration Act, 9 U.S.C. § 9 (1976) 1, 2

28 U.S.C. § 1331 1

OTHER AUTHORITIES:

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SUPPLEMENTAL MEMORANDUM FOR RESPONDENT IN OPPOSITION

This Supplemental Memorandum is submitted pursuant to Rule 22.6 of the Rules of this Court to respond to the Supplemental Memorandum for the Petitioner, filed September 18, 1981, which calls to the attention of the Court the recent decision of the United States Court of Appeals for the Ninth Circuit in *General Atomic Co.* v. *United Nuclear Corp.*, No. 80-5830 (Sept. 8, 1981).

1. According to GAC, the ruling of the Ninth Circuit "heightens the need for review by this Court of the decision of the California State court which is the subject of the present petition" (Supp. Mem. at 1). In fact, however, that decision is largely irrelevant to GAC's petition. The California state court below decided that California courts did not have personal jurisdiction over UNC. The Ninth Circuit decided that Section 9 of the Federal Arbitration Act did not—by itself or in conjunction with 28 U.S.C. § 1331—confer subject matter

jurisdiction on the federal courts. In doing so, it affirmed the district court ruling which preceded the decisions of the California courts and followed every other federal court which has addressed the question. Thus, there is no necessary connection between the Ninth Circuit ruling and the California state court ruling.

2. To the extent that GAC contends that the California courts erred because Section 9 of the Federal Arbitration Act, in its view, provides that only a California federal court or a California state court has jurisdiction over GAC's motion to confirm the arbitration award, the Ninth Circuit decision is consistent with the result below. The Ninth Circuit's holding that Section 9 does not confer federal jurisdiction confirms the natural reading of the statute—that Section 9 specifies only the venue of a confirmation action properly in federal court for independent reasons. Thus, Section 9 is not a jurisdictional provision at all, and the decision of the state court below does not violate any "clear allocation of jurisdiction set out in the Federal Arbitration Act" (Pet. 21).

3. Taken together, the decisions of the California courts and the Ninth Circuit do not create "an anomalous situation whereby GAC [has] no 'alternative remedial option under the Federal Arbitration Act'" (Supp. Mem. at 3). The arbitration agreement upon which GAC relies provides that judgment upon an award "may be entered in any Court having jurisdiction thereof" (Pet. 26a). Acting upon UNC's petition to vacate the award, the New Mexico court found that it had jurisdiction and vacated the award under the Federal Arbitration Act. Thus, GAC has had a hearing in a court that—like any state court—is obliged to follow the standards of the Federal Arbitration Act. See, *e.g.*, *Commercial Metals Co.* v. *Balfour, Guthrie & Co.*, 577 F.2d 264, 269 (5th Cir. 1978); Wright, Miller & Cooper, 13 *Federal Practice and Procedure* § 3569 at 470 n.14 (1975)

and cases there cited. The decision is currently on appeal to the New Mexico Supreme Court and may be reviewed thereafter, if appropriate, in this Court.

4. More fundamentally, nothing in the Ninth Circuit decision affects the dispositive ground of the decision below: the *res judicata* effect of the New Mexico judgments [1]—now final beyond any direct or collateral attack—holding that "the agreement to arbitrate is void." (Pet. 1a.) For that reason, and the other reasons set out in UNC's Brief in Opposition, the petition for writ of certiorari should be denied.

Respectfully submitted,

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[1] The affirmance by the New Mexico Supreme Court of the second New Mexico judgment (see UNC Br. in Opp. at 8-9) has been reported since the last briefs were filed. *United Nuclear Corp.* v. *General Atomic Co.*, —— N.M. ——, 629 P.2d 231 (1980), *appeal dismissed and cert. denied*, No. 80-1360, 49 U.S.L.W. 3787 (April 20, 1981), *rehearing denied*, 49 U.S.L.W. 3912 (June 12, 1981).